In the Supreme Court of the United States

OCTOBER TERM, 1965

JOHN F. O'BRIEN, PETITIONER

v.

HAROLD H. GREENE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENTS TIMOTHY MURPHY, DR. ISAAC C. CAMERON AND THE UNITED STATES OF AMERICA IN OPPOSITION

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No. 359

JOHN F. GRAHAM, PETITIONER

v.

HAROLD H. GREENE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR RESPONDENTS TIMOTHY MURPHY, DR. DALE C. CAMERON AND THE UNITED STATES OF AMERICA IN OPPOSITION

1. Petitioner seeks $1,150,000 damages allegedly resulting from his arrest on charges of sending threatening communications through the mails and his commitment to the District of Columbia General Hospital for mental observation and to St. Elizabeth's Hospital as one incompetent to stand trial. The respondents are three judges of the Court of General Sessions of the District of Columbia,[1] the Superintendent

[1] Judge Murphy was, at the time alleged in the complaint, the Chief of the General Sessions Division of the United States

of St. Elizabeth's Hospital and the United States of America. Originally commenced as three separate actions, the cases were consolidated on appeal by a *sua sponte* order of the Court of Appeals for the District of Columbia Circuit.

Petitioner was arrested on a warrant issued by respondent Judge Greene on the basis of a complaint charging petitioner with having sent through the mails letters threatening the life of his son-in-law. He was brought before Judge Greene on November 30, 1965, and, after a hearing at which he was represented by counsel, petitioner was committed to the District of Columbia General Hospital for thirty days for observation pursuant to 24 D. C. Code 301(a). Shortly thereafter, competency hearings were held before respondent Judge Kelly. She found that petitioner was not capable of understanding the charges against him or participating in his defense and committed him to St. Elizabeth's Hospital for treatment until such time as he was competent to stand trial.[2] Petitioner remained at St. Elizabeth's Hospital until at hearings in May 1966 it was determined that he was then competent to stand trial. Petitioner was then arraigned and re-

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Attorney's office for the District of Columbia. It is for action taken by him in that capacity that petitioner seeks recovery. Judges Greene and Kelly are being represented by the District of Columbia Corporation Counsel and a separate brief in opposition is being filed in their behalf.

[2] This was in full accord with the established authorized practice at the time. See *Mance* v. *Cameron*, 260 F. Supp. 851 (D.D.C.).

leased on his own recognizance. The indictment was subsequently dismissed on the government's motion.

Petitioner then brought suit against the individual respondents charging, in essence, false imprisonment, malicious prosecution, libel, and deprivation of civil rights. The complaint against the United States alleged various deprivations of civil liberties resulting from his confinement and medical malpractice in connection with his alleged treatment for pneumonia while confined at St. Elizabeth's. The district court dismissed the actions and the court of appeals affirmed.

2. It has long been recognized that federal officials must be free to perform their official duties without fear that they may be subjected to tort liability therefor. This Court has thus consistently held that they may not be held personally liable for acts committed within the general scope of their official authority in pursuance of their official duties. *E.g., Barr* v. *Matteo,* 360 U.S. 564; *Howard* v. *Lyons,* 360 U.S. 593. Here the individual respondents were acting well "within the outer perimeter of [their] line of duty," *Barr* v. *Matteo, supra,* 360 U.S. at 575.

3. Petitioner's tort claim against the United States is, in essence, that he was wrongfully confined. But this is not a ground upon which the United States has consented to be sued. 28 U.S.C. 2680 (a), (h). Moreover, the record shows that the district court correctly dismissed the complaint, since petitioner's charges were unsubstantiated. Petitioner's contention

that he was improperly treated for pneumonia at St. Elizabeth's was totally refuted by the medical records of the hospital and an affidavit of one of the staff physicians which showed that petitioner was never treated for pneumonia while at the hospital.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1968.

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